

## ENFORCEMENT FACT SHEET

PROJECT TITLE: Bridgeview Vineyards Inc. 404 Violation and Administrative Order on Consent

RESPONDENT: Robert E. Kerivan, Winery owner.

LOCATION: Sucker Creek, Josephine County, Oregon

VIOLATION DESCRIPTION: In 2002, the owner of Bridgeview, Mr. Kerivan and his employees used heavy equipment to discharge fill material into a section of Sucker Creek adjacent to the vineyards and to construct a new channel for the creek, away from his property. The discharge had the effect of blocking flows through the natural channel of Sucker Creek. Material excavated from construction of the new channel was used to form a berm along the entire length of the new channel, blocking overland flows on one side. Since Sucker Creek, a tributary of the east fork of the Illinois River, is considered "waters of the United States," the action is a violation of section 404 of the federal Clean Water Act. Under that section, persons discharging dredged or fill material, or altering the course of waters of the U.S. must first obtain a permit from the Army Corps of Engineers. Mr. Kerivan did not have, nor had applied for the appropriate permit.

RESOURCES AFFECTED: Mr. Kerivan using heavy equipment to move native materials from within the creek and adjacent floodplain/wetlands to create a 300 foot gravel berm that blocked flows from the natural channel and redirected them to a new channel that was created through a former gravel bar. The removal and subsequent replacement of stream gravels materials and large boulders by heavy equipment to create the channel blocking berm and form a new channel was done in a manner that caused both turbidity-laden return waters and fine sediments/gravels to be reintroduced into the stream. Large quantities of intact riparian vegetation has also removed or buried during the channel relocation activities. Sucker Creek is used by Southern Oregon/Northern California coho salmon for spawning and was designated as critical habitat on May 5, 1999. This constructed berm created an obstacle for migrating adults that are currently moving through the stream system to spawn and may have resulted in smothering some existing coho salmon redds (nests) located downstream

OTHER RELEVANT FACTORS: The Oregon State Police and Department of State Lands initiated a criminal enforcement case against Mr. Kerivan in 2000 for excavation work done in Sucker Creek to remove native gravels from the stream channel and build agricultural road within the Vineyard.

RECOMMENDATION: Issue an Administrative Order on Consent to implement partial restoration actions proposed to benefit the currently impaired creek channel. Also recommending CWA penalties for this violation as Mr. Kerivan has conducted similar activities in Sucker Creek in the past and there is written records from the State of Oregon's previous enforcement files, that Mr. Kerivan is aware of both federal and state permitting requirements.

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